

AMENDED IN ASSEMBLY JUNE 2, 2004

AMENDED IN SENATE MAY 12, 2003

AMENDED IN SENATE MAY 1, 2003

SENATE BILL

No. 1034

Introduced by Senator Murray
(Coauthors: Senators Romero and Speier)
(Coauthors: Assembly Members Longville and Reyes)

February 21, 2003

An act to add Title 10 (commencing with Section 2500) to Part 4 of Division 3 of the Civil Code, relating to contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1034, as amended, Murray. Contracts: recording companies.

Existing law ~~provides that certain persons have a fiduciary duty in the performance of specified obligations~~ *specifies the rights of parties regarding contracts relating to the production of records.*

This bill would specify that ~~the obligation of a recording company to accurately account for royalties earned under a recording artist contract is a fiduciary duty~~, *notwithstanding any provision in a recording artist contract, an artist, or his or her representative, has the right to hire any qualified auditor to audit a record company or its successor or assignee, as specified, to determine if the artist is receiving all of the royalties due to him or her pursuant to the contract. The bill would further permit an artist, notwithstanding any provision in a recording artist contract, or his or her representative, to enter into a contingency fee agreement with an auditor and to have an audit conducted jointly with another artist, as specified.*

The bill would also require the record company to provide an auditor with all records that relate to the audit, as specified. The bill would contain provisions requiring a record company to pay for auditor fees, legal fees, interest on royalties, and treble damages in circumstances in which the audit shows more than a specified percentage of royalties were not paid by the record company to the artist. The bill would also establish procedures for binding arbitration of disputes regarding those audits and would enact other related provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Title 10 (commencing with Section 2500) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 10. RECORDING ARTIST CONTRACTS

~~2500.—The obligation of a recording company to accurately account for royalties earned under a recording artist contract is a fiduciary duty.~~

2500. *This title shall be known and may be cited as the “Recording Industry Accounting Practices Act.”*

2501. (a) *Notwithstanding any provision in a recording artist contract:*

(1) *An artist, or a person or entity representing the artist, has the right to hire any qualified auditor to audit a record company with which the artist has or had a recording contract, or its successor or assignee, at least once a year within three years after a statement regarding royalties has been received by the artist, to determine if the artist is receiving all of the royalties due to him or her pursuant to the contract.*

(2) *The artist or his or her representative may enter into a contingency fee agreement with an auditor to conduct an audit pursuant to paragraph (1).*

(3) *One or more artists may have an audit conducted jointly, pursuant to paragraph (1).*

(b) *The record company shall provide an auditor conducting an audit in accordance with subdivision (a) with all records that relate to the audit, including the manufacturing records, unaccounted for*

1 sales, nonroyalty units, and physical and perpetual inventory
2 records.

3 (c) (1) If the audit shows that more than 10 percent due to the
4 artist in royalties was not paid by the record company, the record
5 company shall pay the party permitted to conduct the audit its
6 costs, including auditor fees, legal fees, and interest accrued on the
7 royalties.

8 (2) The record company shall pay treble damages for any
9 amounts due that exceed the amount specified in paragraph (1).

10 (3) If the audit shows that more than 20 percent due to the artist
11 in royalties was not paid by the record company, the artist shall be
12 entitled to rescind the contract.

13 (d) If the record company and the artist or his or her
14 representative disagree about the amount shown owing to the artist
15 by the audit, the dispute shall be submitted to binding arbitration
16 administered pursuant to the rules and procedures of the American
17 Arbitration Association. The arbitrator shall award attorney's fees
18 to the artist if the arbitrator determines that the record company
19 owes the artist royalties.

20 (e) The audit shall commence no later than 60 days from the
21 receipt of the notice of examination. The record company shall
22 respond within 45 days of receipt of the audit or examination
23 claim.

24 (f) The remedies provided by this section are in addition to any
25 other remedies provided by other applicable federal or state laws.

